

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Tyrone Price,

Plaintiff,

Case No. 17-cv-13011

v.

Judith E. Levy

United States District Judge

Milmar Food Group, LLC,

Mag. Judge R. Steven Whalen

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION [23]**

Before the Court is Magistrate Judge R. Steven Whalen's Report and Recommendation recommending the Court GRANT defendant's motion to dismiss (Dkt. 8) and second filed motion to dismiss<sup>1</sup> (Dkt. 16). (Dkt. 23.) The parties were required to file specific written objections within 14 days of service. Fed. R. Civ. P. 72(b)(2); E.D. Mich. L.R. 72.1(d). No objections were filed. The Court has nevertheless carefully reviewed

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<sup>1</sup> Plaintiff re-filed his complaint (Dkt. 14) and defendant subsequently re-filed its motion to dismiss and/or for summary judgment. (Dkt. 16.) Plaintiff's second filed complaint is identical to his first, excluding exhibits which Judge Whalen did not consider in his Report and Recommendation based on Fed. R. Civ. Pro. 12(b)(6). Defendant's second filed motion is identical except for an explanation for its second filing. (Dkt. 16 at 1.)

the Report and Recommendation, and concurs in the reasoning and result. Accordingly,

The Report and Recommendation (Dkt. 23) is ADOPTED;

Defendant's motion to dismiss (Dkts. 8, 16) is GRANTED;

Plaintiff's 42 U.S.C. § 1983 claim is DISMISSED WITH PREJUDICE;

Pursuant to 28. U.S.C. 1367(c)(3), plaintiff's state law claim is DISMISSED WITHOUT PREJUDICE;

Plaintiff's filing, to any extent it could be construed as a motion to dismiss and/or for summary judgment,<sup>2</sup> is DENIED.

IT IS SO ORDERED.

Dated: September 11, 2018  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

### **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 11, 2018.

s/Shawna Burns  
SHAWNA BURNS  
Case Manager

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<sup>2</sup> Judge Whalen treated plaintiff's "Motion to Dismiss and Summary Judgment" (Dkt. 10) as plaintiff's response to defendant's motion. The Court agrees that plaintiff's motion in substance was his response to defendant's motion.